

HONORABLE TIMOTHY W. DORE

HEARING DATE: FRIDAY, SEPTEMBER 8, 2017
HEARING TIME: 9:30 A.M.
LOCATION: COURTROOM 8106, SEATTLE
RESPONSE DUE: FRIDAY, SEPTEMBER 5, 2017

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

DANCING WATERS, LLC,

Debtor.

In re

GOVERNOR'S POINT DEVELOPMENT CO.,

Debtor.

In re

PLEASANT BAY PROPERTIES &
ASSOCIATES, LP,

Debtor.

In re

PLEASANT ROAD PARTNERS, LP,

Debtor.

In re

CARL ROGER SAHLIN,

Debtor.

Lead Case No. 15-13216

(Jointly Administered with
Case Nos. 15-13217; 15-13218; 15-13219;
and 15-13220)

DEBTORS' MOTION FOR ORDER
APPROVING SALE OF REAL
PROPERTY

Dancing Waters, LLC, Governor's Point Development Co., Pleasant Bay Properties &
Associates, LP, Pleasant Road Partners, LP (collectively, the "Entity Debtors"), and Carl Roger Sahlin

DEBTORS' MOTION FOR ORDER APPROVING SALE OF
REAL PROPERTY – Page 1

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1 (“Sahlin” and, collectively with the Entity Debtors, the “Debtors”), reorganized debtors in the above-
2 captioned cases, move the Court for entry of an order approving the sale of the Debtors’ real property
3 located near Bellingham, Washington, as more particularly described below (the “Governor’s Point
4 Property” or the “Property”) pursuant to §§ 363(b), (f) and (m) of the Bankruptcy Code and
5 Bankruptcy Rule 6004. This motion (the “Motion”) is based upon the files and records herein, and the
6 accompanying Declaration of C. Roger Sahlin.

7 I. BACKGROUND

8 A. The Debtors and the Governor’s Point Property

9 The Debtors filed their bankruptcy petitions on May 22, 2015 (the “Petition Date”). Each has
10 retained control over its assets and (where applicable) continues to operate its business pursuant to
11 §§ 1107 and 1108 of the Bankruptcy Code.

12 Each of the Debtors owns undivided partial interests in the Governor’s Point Property. The
13 Governor’s Point Property is a 125-acre undeveloped residential site located on the Washington
14 coastline approximately six miles south of Bellingham. The Property has 9,500 feet of marine
15 shoreline frontage on Chuckanut, Samish and Pleasant Bays in the Salish Sea. A map of the
16 Governor’s Point Property showing the Debtors’ ownership interests and a legal description of the
17 Property were previously submitted. *See* Doc 80.1, 80.2. Each of Entity Debtors is owned in varying
18 percentages by debtor Sahlin or other members of the Sahlin family.

19 B. Marketing and Prior Contract for Sale of Property

20 Prior to the Petition Date, the Debtors employed Cushman & Wakefield of San Diego, Inc.
21 (“C&W San Diego”) and Commerce Real Estate Solutions LLC (“CRES”) to assist them with the
22 marketing and sale of the Governor’s Point Property. C&W San Diego and CRES marketed the
23 Property nationally and internationally for a period of approximately nine months prior to the Petition

1 Date, and continued to do so following the filing of these cases. Although a number of leads were
2 developed and discussions were had with at least three interested buyers, the Debtors were unable to
3 achieve a sale of the Property during the initial months of the case.

4 The Debtors then determined to proceed to an auction sale of the Property and engaged CBRE,
5 Inc., to provide those services. The Property was further marketed in connection with the auction
6 process. Unfortunately, at the bid deadline only one deposit from a bidder was received. Only the
7 registered bidder appeared at the time set for the auction, who declined to submit a bid.

8 At about that same time, another interested party appeared at the auction location, Land Baron
9 and Company. The Debtors' representatives then negotiated the terms of a purchase with Land Baron,
10 which provided for a purchase price (including buyer's premium) of \$9,720,000, a 30-day due
11 diligence period and a 60-day closing, both measured commencing the date of entry of an order
12 approving the sale. The sale was approved by order entered October 20, 2015. *See* Doc 104.

13 Land Baron was unable to consummate the purchase. The Debtors granted Land Baron
14 multiple extensions of its closing deadline, eventually collecting \$400,000 in non-refundable earnest
15 money. However, despite these extensions Land Baron was unable to close its purchase, and its
16 contract expired in early June 2016. By then, the Property had been off the market for eight months.

17 **C. Financing Transaction.**

18 As of the Petition Date, Heritage Bank ("Heritage") held first- and second-position deeds of
19 trust against each of the parcels comprising the Property to secure two loans previously made to
20 Sahlin totaling approximately \$3.2 million as of the Petition Date. Two other creditors hold secured
21 claims against the Debtors – Miller Nash Graham & Dunn LLP ("MNGD") filed a proof of claim in
22 the amount of \$256,653.52, *see* Claim No. 6, secured by a deed of trust encumbering one 20-acre
23 parcel of the Property that is junior to the deeds of trust in favor of Heritage. TENMTR, LLC filed a

1 proof of claim in the amount of \$840,602.41, *see* Claim No. 5, that is secured by a deed of trust
2 encumbering each of the parcels comprising the Property, junior to the deeds of trust held by Heritage
3 and MNGD.

4 In July 2016, the Debtors entered into a financing transaction with Copper Leaf, LLC (the
5 “Financing Transaction”). Pursuant to the Financing Transaction, Copper Leaf acquired Heritage’s
6 notes and deeds of trust, extended the maturity date fifteen months, and advanced additional funds to
7 the Debtors to pay outstanding real property taxes and administrative expense claims. MNGD agreed
8 to reduce its claim to \$100,000, of which \$50,000 was paid at the closing of the Financing
9 Transaction, and TENMTR retained its deed of trust subordinate to Copper Leaf and MNGD.
10 Amounts due under the Financing Transaction would be due on November 22, 2017. This Court
11 approved the Financing Transaction by order entered August 22, 2016. *See* Doc 233.

12 **D. Madrona Bay Sale.**

13 The Debtors and their professionals immediately resumed marketing the Property after the
14 failure of the Land Baron transaction, and thereafter negotiated a sale of the Property (the “Madrona
15 Bay Sale”) to Madrona Bay Real Estate Investments, LLC (“Madrona Bay”). The Madrona Bay Sale
16 provided for a purchase price of \$8,300,000, of which \$6,000,000 was to be paid at closing with the
17 balance evidenced by a promissory note due in three years, and a 90-day due diligence and 150-day
18 closing period (commencing on execution of the purchase and sale agreement), with the buyer having
19 the right to extend both for an additional 60 days. This Court approved the Madrona Bay Sale by
20 order entered December 23, 2016. *See* Doc. 264.

21 Unfortunately, the Madrona Bay Sale failed to close. By letter from its counsel dated May 16,
22 2017, Madrona Bay terminated the Madrona Bay Sale. The Debtors believe Madrona Bay’s
23 termination was wrongful, and have commenced an adversary proceeding seeking a declaratory

1 judgment determining that the Debtors are entitled to the \$200,000 earnest money that Madrona Bay
2 earlier deposited. *See Dancing Waters, LLC, et al., v. Madrona Bay Real Estate Investment LLC*,
3 Adv. No. 17-01100.

4 **E. Gaines Sale.**

5 The Debtors and their professionals again resumed marketing the Property after the failure of
6 the Madrona Bay Sale. In addition to the marketing efforts of C&W of San Diego and CRES, the
7 Debtors engaged TEN-X to provide additional exposure for the Property.

8 The Debtors have now negotiated a sale of the Property (the “Sale”) to the Don and Pam
9 Gaines Family Trust (“Buyer”) pursuant to the terms of a Real Estate Purchase and Sale Agreement
10 (the “Gaines PSA”). An unsigned copy of the Gaines PSA is attached as Exhibit A to the Sahlin
11 Declaration.¹ The material terms of the Sale are as follows:

- 12 • Purchase price: \$6,800,000, all cash at closing.
- 13 • Earnest money: \$1,000,000 cash, already in escrow, to be applied against purchase
14 price.
- 15 • Due diligence; Closing: 30-day due diligence period commencing upon court approval
16 of the Sale, closing five (5) business days following expiration or waiver of due
17 diligence contingency.

18 The Debtors request that the Court approve the Sale.

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22 ¹ To expedite the filing of this Motion, an unsigned copy of the PSA has been submitted. The Debtors
23 believe that the final executed PSA will be in this or in substantially the same form. A copy of the executed
PSA will be filed when available, and the Debtors will identify any changes from the submitted form.

II. DISCUSSION

Section 363(b) of the Bankruptcy Code authorizes a debtor to sell its assets outside of the ordinary course of business. In this case, the Debtors' confirmed plan of liquidation anticipated and is in large part based upon a sale of the Property.

A debtor must show that each of the following elements has been met: (i) that a sound business reason exists for the proposed transaction; (ii) the sale has been proposed in good faith; (iii) the sale price is fair and reasonable; and (iv) that accurate and reasonable notice has been provided of the transaction.² The proposed Sale meets each of these four factors.

A. Sound Business Reason.

The Debtors' confirmed plan anticipates this Sale. Although the plan was based upon the failed Madrona Bay sale transaction, the plan nevertheless was largely based upon the liquidation of the Property to pay creditors to the extent of its sale proceeds. That is what the Sale will do.

B. Good Faith.

This is an arm's length transaction entered into after extensive third-party marketing. The buyer is unrelated to any of the Debtors.

C. Fair and Reasonable Sale Price.

The Property has been extensively marketed. It was marketed for almost a year prior to bankruptcy, and was marketed for some months following the Petition Date during the summer of 2015. It was marketed further and through different channels in connection with the 2015 auction process. It was off the market during the time it was under contract to Land Baron, but was again

² In *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983); *Bartel v. Bar Harbor Airways, Inc.*, 196 B.R. 268 (S.D.N.Y. 1996); *In re Equity Management Systems*, 149 B.R. 120 (Bankr.S.D.Iowa 1993); *In re Channel One Communications, Inc.*, 117 B.R. 493 (Bankr.E.D.Mo. 1990).

1 marketed in the summer of 2016, eventually resulting in the proposed sale to Madrona Bay. It was off
2 the market again for approximately six months while the Property was under contract to Madrona
3 Bay.
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1 The Debtors aggressively marketed the Property after the Madrona Bay transaction failed.
2 Because the financing with Copper Leaf matures in November 2017, the Debtors have a limited time
3 in which to close a sale of the Property. Under the circumstances, the Debtors believe that the PSA
4 reflects a market price for the Property.

5 The PSA provides for a total of \$6.8 million to be paid at closing. That amount will be
6 sufficient to pay all secured debt and accrued administrative expense claims, plus return additional
7 funds for the estate to distribute under the Debtors' confirmed plan. The amount if that surplus cannot
8 be determined at this time, because it is dependent upon the timing of the closing, and whether a prior
9 sale by Sahlin of the "Shorewood" property also closes. If the Shorewood sale closes in advance of
10 the closing of this Sale, Copper Leaf will receive a distribution of \$250,000 and its payoff from the
11 sale of the Property will be reduced by that same amount. The Debtors estimate that there may be
12 \$200,000 of surplus proceeds, and will update this figure prior to or in connection with the hearing on
13 approval of the Sale.

14 **D. Notice.**

15 The Debtors have requested that time be shortened to permit hearing of this matter on the
16 Court's September 8, 2017 calendar. However, there have been few matters to which creditors have
17 objected, or even responded, and the Debtors do not believe creditors will object to the Sale. Time is
18 of the essence, as the Copper Leaf financing matures on November 22, 2017. Under the
19 circumstances, the Debtors believe that notice of this Motion is reasonable and appropriate.
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1 **CONCLUSION**

2 Based on the foregoing, the Debtors respectfully request that this Court enter an order
3 approving the Sale pursuant to the terms of the PSA.

4 DATED this 24th day of August, 2017.

5 OGDEN MURPHY WALLACE, PLLC

BUSH STROUT & KORNFELD LLP

6
7 By /s/ William F. Malaier, Jr.
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